

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 1089  
PROPOSED COMMITTEE SUBSTITUTE H1089-CSST-61 [v.4]

06/13/2018 11:40:22 PM

Short Title: Candidacy Challenge/Expunged Felony/Sheriff.

(Public)

Sponsors:

Referred to:

June 11, 2018

A BILL TO BE ENTITLED  
AN ACT TO REQUIRE THAT THE BURDEN OF PROOF IN CERTAIN CHALLENGES TO  
CANDIDACY BE PLACED ON THE CHALLENGER UNDER THE LAWS  
GOVERNING ELECTIONS; TO REQUIRE A CANDIDATE FOR SHERIFF TO  
DISCLOSE ALL EXPUNGED FELONIES; AND TO CLARIFY FELONS VOTING  
WITHOUT RIGHTS OF CITIZENSHIP RESTORED.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** G.S. 163A-1029(a) reads as rewritten:

"(a) ~~The~~ Except for a challenge based on residency as provided in subsection (b) of this section, the burden of proof shall be upon the ~~candidate,~~ challenger, who must show by a preponderance of the evidence of the record as a whole that ~~he or she is~~ the candidate is not qualified to be a candidate for the office."

**SECTION 1.(b)** This act is effective when it becomes law and applies to challenges to candidacy on or after that date.

**SECTION 2.(a)** G.S. 162-2 reads as rewritten:

"§ 162-2. Disqualifications for the office.

(a) No person shall be eligible for the office of sheriff who

(1) ~~is~~ Is not of the age of 21 ~~years,~~ years.

(2) ~~Has been~~ Has been convicted of a felony against this State, the United States, or another state, including an expunction of any felony.

(3) ~~or has~~ Has not resided in the county in which ~~he~~ that person is chosen for one year immediately preceding ~~his~~ the election.

(b) Notwithstanding Article 5 of Chapter 15A of the General Statutes, any individual seeking election, or appointment for a vacancy, to the office of sheriff, shall disclose all felony convictions in accordance with G.S. 163A-972, regardless of whether or not a conviction was expunged. This section shall not apply to pardons of innocence or judicial determinations of actual innocence.

(c) No person shall engage in the practice of law or serve as a member of the General Assembly while serving as sheriff."

**SECTION 2.(b)** G.S. 163A-972 is amended by adding a new subsection to read:

"(f) Sheriff Candidates – Expunction Disclosure. – In addition to all disclosures under subsection (e) of this section, a candidate for the office of sheriff shall disclose all expunctions under G.S. 15A-145.1, 15A-145.4, 15A-145.5, and 15A-145.6, except for a felony expungement that is the result of a pardon of innocence or a judicial determination of actual innocence."

**SECTION 2.(c)** G.S. 15A-151 reads as rewritten:

"§ 15A-151. Confidential agency files; exceptions to expunction.



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(a) The Administrative Office of the Courts shall maintain a confidential file for expungements containing the petitions granted under this Article and the names of those people for whom it received a notice under G.S. 15A-150. The information contained in the file may be disclosed only as follows:

- (1) Upon request of a judge of the General Court of Justice of North Carolina for the purpose of ascertaining whether a person charged with an offense has been previously granted a discharge or an expunction.
- (2) Upon request of a person requesting confirmation of the person's own discharge or expunction.
- (3) To the General Court of Justice of North Carolina in response to a subpoena or other court order issued pursuant to a civil action under G.S. 15A-152.
- (4) Upon request of State or local law enforcement, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or 15A-145.6 for employment purposes only.
- (5) Upon the request of the North Carolina Criminal Justice Education and Training Standards Commission, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or 15A-145.6 for certification purposes only.
- (6) Upon request of the North Carolina Sheriff's Standards Commission, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or 15A-145.6 for certification purposes only.
- (7) To the district attorney in accordance with G.S. 15A-151.5.
- (8) To a county board of elections or the State Board of Elections and Ethics Enforcement, if a candidate challenge is filed under Part 3 of Article 19 of Chapter 163A of the General Statutes.

(b) All agencies required under G.S. 15A-150 to expunge from records all entries made as a result of a charge or conviction ordered expunged who maintain a licensing agreement to provide record information to a private entity shall maintain a confidential file containing information verifying the expunction and subsequent notification to private entities as required by G.S. 15A-150(d). The information contained in the file shall be disclosed only to a person requesting confirmation of expunction of the record of the person's own discharge or expunction, as provided in G.S. 15A-152.

(c) The Division of Motor Vehicles shall not be required to expunge a record if the expunction of the record is expressly prohibited by the federal Commercial Motor Vehicle Safety Act of 1986, the federal Motor Carrier Safety Improvement Act of 1999, or regulations adopted pursuant to either act.

(d) The information contained in the confidential file disclosed under subdivision (a)(8) of this section may be disclosed to the public at the discretion of the county board of elections or State Board of Elections and Ethics Enforcement."

**SECTION 2.(d)** G.S. 15A-153(e) reads as rewritten:

"(e) [Exceptions. –] The provisions of subsection (d) of this section do not apply to any individual seeking or holding the office of sheriff, or to any applicant or licensee seeking or holding any certification issued by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to Chapter 17C of the General Statutes or the North Carolina Sheriffs Education and Training Standards Commission pursuant to Chapter 17E of the General Statutes:

- (1) Convictions expunged pursuant to G.S. 15A-145.4. – Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes shall disclose any and all felony convictions to the certifying Commission regardless of whether or not the felony convictions were expunged pursuant to the provisions of G.S. 15A-145.4.

(2) Convictions expunged pursuant to G.S. 15A-145.5. – Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes shall disclose any and all convictions to the certifying Commission regardless of whether or not the convictions were expunged pursuant to the provisions of G.S. 15A-145.5."

**SECTION 2.(e)** This section becomes effective when it becomes law, and applies to elections held on or after that date and to the filling of vacancies occurring on or after that date.

**SECTION 3.(a)** G.S. 163A-1389 reads as rewritten:

**"§ 163A-1389. Certain acts declared felonies.**

Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

...

(5) For any person convicted of a crime which excludes the person from the right of suffrage, to vote with intent to commit a fraud at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law.

..."

**SECTION 3.(b)** This act becomes effective December 1, 2018, and applies to offenses committed on or after that date.

**SECTION 4.** Except as otherwise provided, this act is effective when it becomes law.